

**IN THE UNITED STATES DISTRICT COURT IN AND FOR THE
EASTERN DISTRICT OF OKLAHOMA**

**CASSANDRA ELIZABETH FREE and
WILLIAM BRETT FREE, individually
and as the Natural Parents and Next of
Friend of ANDREW BRADY FREE,
deceased minor child,**

Plaintiffs,

vs.

**MALIBU BOATS, LLC; MALIBU
BOATS HOLDINGS, LLC; MALIBU
BOATS, INC.,; and MALIBU BOATS
WEST, INC.,**

Defendants.

**CASE NO. 6:22-cv-00167-RAW-JAR
JUDGE RONALD A. WHITE**

JURY TRIAL DEMANDED

JOINT STATUS REPORT

JURY DEMANDED: X Yes No

Pursuant to Federal Rules of Civil Procedure 26(f) meeting was held on 5/29/2023 at 10:00am. Plaintiffs appearing by counsel, Guy A. Fortney, and Defendants appearing by counsel, Robert B. Houston.

- I. *Summary of Claims:* Plaintiffs, Cassandra and William Free, individually and as natural parents and next of friend of Andrew Brady Free, a deceased minor child, bring claims for the wrongful death of their child against Malibu Boats, LLC; Malibu Boats, Inc.; and Malibu Boats West, Inc. under theories of product liability for a failure to warn and manufacturing/design defect; negligence and a survival action. Andrew Brady Free died on June 6, 2020 after he succumbed to carbon monoxide poisoning while sitting in the “Rear Passenger Seats” where he was exposed to fatal levels of carbon monoxide without detection or warning.
- II. *Summary of Defenses:* Defendants deny liability and rely on all applicable factual and legal defenses as set forth in its Answer and discovery responses, including the following:
 - a. Abnormal Use or Misuse
 - b. Comparative Negligence or Fault
 - c. Extended Use/Lapse of time
 - d. State of Art
 - e. Material Changes to Product
 - f. Lack of Causation
 - g. Deny punitive damages are warranted
- III. Motions Pending: None.

IV. Are Dispositive Motions Anticipated? *If so, describe them.*

Yes – on the issues of corporate liability and successor liability.

V. Stipulations:

a. Jurisdiction Admitted: X Yes No, Explain:

b. Venue Appropriate: X Yes No, Explain:

c. Facts: Cassandra Elizabeth Free and William Brett Free are the natural parents of Andrew Brady Free; Andrew Brady Free was 9 years old at the time of his death on June 6, 2020; and Cassandra Elizabeth Free and William Brett Free are the owners of a 20' Malibu Response manufactured on or about January, 1997 in Loudon, Tennessee (Hull ID No. US-MB2P7233A797, Serial No. P7233).

d. Law: Plaintiffs' claims arise under general theories of negligence, products liability under *Kirkland v. Gen. Motors Corp.*, 1974 OK 52, 521 P.2d 1353 and its progeny cases. Plaintiffs' action for wrongful death and damages arises under 12 O.S. § 1053 et seq. Plaintiffs also allege negligent infliction of emotional distress on behalf of Cassandra Elizabeth Free and William Brett Free.

VI. **Fed. R. Civ. P. 26 Discovery Plan:** The parties jointly propose to the Court the following discovery plan: (Use separate paragraphs or subparagraphs as necessary if parties disagree.)

Have initial disclosures under Rule 26(a)(1) been exchanged and filed?

 X Yes No, Explain:

Note: Plaintiff shall submit a calculation of every category of damages requested.

Note that pursuant to Rule 26 and this Order, all parties are under an affirmative duty to (i) comply with the mandatory disclosure requirements, and (ii) notify the court of any nondisclosure so that the issue can be promptly resolved. Failure of any party to disclose information, or failure of any party to bring disclosure issues to the court's attention in a timely manner, may result in sanctions, including prohibiting the use of that information at trial, pursuant to Rule 37(c)(1).

If applicable, have disclosures pursuant to Fed. R. Civ. P. 7.1 been filed?

 X Yes No, Explain:

Should any changes be made in the limitations on discovery imposed by the Federal Rules of Civil Procedure or the court's local rules?

 Yes X No, Explain:

Discovery will be needed on the following subjects: All relevant issues as determined by FRCP 26.

Should discovery be limited at this time to any particular subject matters or issues?

_____ Yes ☒ No, Explain:

Phased Discovery requested (*If requested, the in-person Joint Status Conference cannot be waived*):

_____ Yes ☒ No, Explain:

All discovery commenced in time to be completed by 3/29/2024
 Discovery on _____ (issue for early discovery)
 to be completed by _____.

Maximum of [per FRCP 33] _____ interrogatories by each party to any other party. Responses due [per FRCP 33] _____ days after service.
 Maximum of [per FRCP 33] _____ requests for admission by each party to any other party. Responses due [per FRCP 33] _____ days after service.

Maximum of 20 depositions by plaintiff(s) and 20 by defendant(s).

Each deposition (other than of _____)
 limited to maximum of [per EDOK LCvR 30.1(b)] _____ hours unless extended by agreement of parties.

Is there a need for any other special discovery management orders by the court?

_____ Yes ☒ No, Explain:

Estimated number of days required for trial: 7 to 10 days.

VII. All parties consent to trial before Magistrate Judge? _____ Yes ☒ No

If you mark "yes", you will be deemed to have consented to the jurisdiction of the assigned United States Magistrate Judge without the necessity for the filing or submission of any other documentation. The United States Magistrate Judge will exercise complete jurisdiction over this case through and including trial and the entry of a final judgment in accordance with 28 U.S.C. § 636(c)(1) and Fed. R. Civ. P. 73(a).

If you mark "no", the case will immediately be reassigned to a United States District Judge.

VIII. Settlement Plan **(Check one)**

a. ☐ Settlement Conference Requested after _____ 20____.

b. ☒ Other ADR: (Explain) Parties will engage in a private mediation on or before 2/29/2024.

IX. Do the parties request that the Court hold a Scheduling Conference?

☒ Yes ☐ No

The Court has set a scheduling conference for June 29, 2023 at 10:00 a.m.

If the parties consent to the United States Magistrate Judge under Section VII and do not request a Scheduling Conference, the Court will issue a Scheduling Order based on the information contained in this Joint Status Report and no Scheduling Conference will be conducted, unless otherwise ordered by the Court.

Read and Approved by:

/s/ Guy A. Fortney

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